

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STATE OF WASHINGTON

11 Plaintiff,

12 v.

13 UNITED STATES DEPARTMENT OF
14 THE NAVY, *et al.*,

Defendants.

Case No. 19-cv-1059-RAJ

**ORDER DENYING MOTION
FOR ATTORNEY'S FEES**

15 **I. Introduction**

16 This matter comes before the Court on Plaintiff's motion for an interim award of
17 attorneys' fees and costs. Dkt. # 120. For the reasons below, the motion is **DENIED**
18 without prejudice.

19 **II. Background**

20 Plaintiff Citizens of Ebey's Reserve (COER) moves for an interim award of
21 attorneys' fees and expert costs pursuant to Fed. R. Civ. P. 54. COER seeks an interim
22 award of attorneys' fees under the Equal Access to Justice Act as the prevailing party
23 given the Court's August 2, 2022 Order Adopting Report and Recommendation (Dkt.
24 119). Under the Equal Access to Justice Act ("EAJA"), plaintiffs are entitled to an award
25 of attorneys' fees and costs as a prevailing party against the United States. *See Love v.*
26 *Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991) (stating that "an award of fees is mandatory
27 under the EAJA unless the government's position is substantially justified or special

1 circumstances exist that make an award of fees unjust").

2 **III. Legal Standard**

3 Federal Rule of Civil Procedure 54 outlines the basic procedures for requesting
 4 attorneys' fees. A claim for attorney's fees and related nontaxable expenses must be
 5 made by motion unless the substantive law requires those fees to be proved at trial as an
 6 element of damages. Fed. R. Civ. P 54(d)(2)(A). Unless a statute or a court order
 7 provides otherwise, the motion must be filed no later than 14 days after the entry of
 8 judgment. Fed. R. Civ. P 54(d)(2)(B). The EAJA requires that a party seeking attorneys'
 9 fees must submit an application to the court "within thirty days of final judgment in the
 10 action." 28 U.S.C. § 2413(d)(1)(B) (1988).

11 **IV. Discussion**

12 COER argues that it prevailed on its claim challenging the adequacy of the EIS.
 13 Dkt. # 120 at 2. According to COER, because it achieved the principal ruling it sought in
 14 bringing this lawsuit, it argues that it is a prevailing party under EAJA. *Id.*

15 Federal Defendants argue that Plaintiff's request for attorneys' fees is premature
 16 because a request for fees is allowed only after a final, non-appealable judgment. The
 17 EAJA requires that a party seeking attorneys' fees must submit an application to the court
 18 "within thirty days of final judgment in the action." 28 U.S.C. § 2413(d)(1)(B) (1988).
 19 Congress defined "final judgment" as one that is "final and not appealable." 28 U.S.C. §
 20 2421(d)(2)(G) (1988). Furthermore, even when the Court enters an order constituting a
 21 "judgment" for purposes of the FRCP and EAJA, if Federal Defendants choose to appeal
 22 that order it will remain non-final until the appeal is resolved. *See* 28 U.S.C. §
 23 2412(d)(2)(G). Federal Defendants add that the remedy related to the Court's order has
 24 not yet been decided, and accordingly, they cannot evaluate the strength of COER's
 25 claim for fees. Dkt. # 123 at 3.

26 The Court agrees with the Federal Defendants that it should defer the attorneys'
 27 fees decision until final judgment to promote judicial efficiency. First, Federal

1 Defendants are correct that final judgment has not been entered. Second, since the
2 “degree of success obtained” still depends on the remedy achieved and the outcome of
3 any appeal, the Court cannot yet fully determine Plaintiff’s success in this litigation.
4 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Ultimately, without complete
5 information on Plaintiff’s success, the Court cannot undertake a proper attorneys’ fees
6 analysis.

7 Accordingly, the Court **DENIES** Plaintiff’s motion for attorneys’ fees without
8 prejudice.

9 **V. Conclusion**

10 For the foregoing reasons, the Court **DENIES** Plaintiff’s motion for attorneys’
11 fees without prejudice. Dkt. # 120. This motion may be renewed when final judgment is
12 entered.

13 DATED this 16th day of March, 2023.

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17 The Honorable Richard A. Jones
18 United States District Judge
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